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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,807	03/23/2004	Arnold P. Nerenberg	NERE-3814	2908

5409 7590 09/20/2005

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LATHAM, NY 12110

EXAMINER
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LEWIN, ALLANA

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/806,807

**Applicant(s)**

NERENBERG, ARNOLD P.

**Examiner**

Allana Lewin

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 23 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 21-23, 25-44, 50-52 and 54-58 is/are rejected.
- 7) ☒ Claim(s) 16-20, 24, 45-49 and 53 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/23/2004.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

JEROME W. DONNELLY  
PRIMARY EXAMINER



## **DETAILED ACTION**

### ***Specification***

The disclosure is objected to because of the following informalities: reference numeral 47 is disclosed as a 'latching device' (page 9, line 7) and also a 'mouse pad' (page 9, lines 14-15). Appropriate correction is required.

Furthermore, misspelling of the words "fourth" and "accessory" appear numerous times, too many to mention individually, throughout the specification and the claims. The specification and claims should be revised so that the word 'forth' is replaced by --fourth-- and 'accessary' is replaced with --accessory-- in all appropriate instances.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "resilient" is not supported by the specification or the drawings to uphold its intended meaning. The specification fails to disclose members 31, 32, 38, 39, 89, 90, 101, 153 and 174 as being resilient so as one of ordinary skill in the art would expect.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15, 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Randolph (US Pat. No. 5,616,111) in view of Chavin et al (US Pat. No. 1,973,945).

Note that the "resilient members" are interpreted as substantially rigid based on the drawings and specification of the disclosure and the claims are therefore rejected as best understood by the examiner.

Randolph substantially discloses the claimed invention, as shown in Figure 3a, which is a portable exercise apparatus comprising a body support structure having a sitting structure (see proximate lead line 14) attached to a back support structure (see proximate lead line 24), with a removably attachable exercising structure (see Figure 14a) comprising a first structure (see proximate lead lines 381 and 382) movably attached (see proximate lead line 389) to a second structure (see proximate lead lines 330 and 321), an attachment device (see proximate lead line 30) that can removably attach the second structure to the body support structure, and a resistance means between the first and second structures (see proximate lead line 42). Randolph fails to indicate the apparatus having a sitting structure pivotally attached to the back support structure. Chavin discloses an exercising apparatus comprising a sitting structure

pivotaly attached to a back support structure (note Figure 3 and column 2, lines 83-85). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the exercise apparatus of Randolph in view of the teachings of Chavin with a pivot connecting the sitting structure to the back support structure in order for the back support structure to be positioned at various angular positions with respect to the sitting structure and thereby increasing the quantity and types of exercises able to be performed.

Regarding claim 2, the exercise apparatus of Randolph has the first structure, as discussed above, rotatably attached (see proximate lead line 329) to the second structure, as discussed above.

The exercise apparatus of Randolph is adapted to be placed on a supporting structure that is a floor and may be place on other supporting structures. In regard to claims 3, 5 and 6, the applicant has failed to positively claim the supporting structures of a couch, chair, wheel chair, or an automobile seat. Therefore, they are considered by the examiner to have no patentable weight and are not considered part of the claim limitations.

Regarding claim 7, the exercise device of Randolph comprises at least one resistance band (see proximate lead line 42).

Regarding claim 8, Randolph, as discussed above, differs from the claimed invention in that it does not disclose an exercise apparatus with the resistance means comprising a spring. Chavin teaches an exercise apparatus that uses at least one spring as the resistance means. It is very well known in the art to employ springs as a

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means of providing resistance. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized at least one spring as the resistance means for the Randolph device in view of the teachings of Chavin.

Regarding claim 9, Randolph discloses an exercise apparatus with a back support structure (see proximate lead line 24) having a first substantially flat structure (note Figure 3a) mounted on a first side of a first frame (note Figure 4a and proximate lead line 20), and a sitting structure (see proximate lead line 14) having a second substantially flat structure (note Figure 3a) mounted on a first side of a second frame (note Figure 4a and proximate lead lines 12, 16, 18, 21, 23). Randolph fails to indicate first and second elongated members attached to the first frame, as well as third and fourth elongated members attached to the second frame. Chavin teaches a back support comprising a first substantially flat structure (see proximate lead line 16) mounted on a first side of a first frame (note Figure 7 and proximate lead line 30), a first elongated member attached to the first frame (see proximate lead line 61), and a second elongated member attached to the first frame (see proximate lead line 59). Furthermore, Chavin teaches a sitting structure comprising a second substantially flat structure (see proximate lead line 15) mounted on a first side of a second frame (note Figure 7 and proximate lead line 25), with third and fourth elongated members attached to the second frame (note Figure 1 and proximate lead line 20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized elongated members in the exercise apparatus of Randolph based on the teachings of Chavin to add support and stability to the Randolph device.

Regarding claims 10-13, in view of Randolph as modified by Chavin, Chavin teaches an exercising structure (see proximate lead line 26) removably attached to the third and fourth elongated members (see proximate lead lines 20 and 26 in Figures 2 and 3). Based on this teaching, it would have been obvious to have at least one exercising structure removably attached to any elongated member.

Regarding claim 14, the exercise apparatus of Randolph does not disclose the substantially flat structures comprising a material selected from the group consisting of wood, metal, and plastic. Chavin teaches that either wood or metal may be used (column 5, lines 19-26). Furthermore, it is well known in the art that wood, metal and plastic are commonly used in the construction of exercise devices so that they are structurally stable and can be produced in a cost effective manner. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized a material selected from the group consisting of wood, metal, and plastic for the first and second substantially flat structures for the Randolph apparatus in order for the device to maintain its structural integrity and also be manufactured in a cost effective manner.

Regarding claim 15, Randolph does not disclose padding structures that are coupled to the flat structures. Chavin teaches a first padding structure (see proximate lead line 18) coupled (column 2, lines 85-89) to the first flat structure (note Figure 1), and a second padding structure (see proximate lead line 17) coupled (column 2, lines 85-89) to the second flat structure (note Figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have attached

padded structures to the flat structures on the device of Randolph in view of the teachings of Chavin in order to add comfort to the user while exercising.

Regarding claim 21, the exercise apparatus of Randolph discloses a fifth elongated member attached to the second frame (see proximate lead line 507 and column 10, lines 25-26), a leg exercising structure (note Figures 28a and 29) removably attached to the fifth elongated member (note Figure 26), where the leg exercising structure comprises a third structure (see proximate lead lines 561 and 562) pivotally attached (see proximate lead line 527) to an attachment structure (see proximate lead lines 526, 563, 54, 523, 50, 506), a fourth structure (see proximate lead line 521 and 522) pivotally attached (see proximate lead lines 527 and 503) to the attachment structure, a second resistance means (note lower half of Figure 4a, proximate lead line 42) for applying a preset amount of resistance against movement of the third structure and the fourth structure. Furthermore, the attachment structure can removably attach the leg exercising structure to the fifth elongated member (note Figure 26).

Regarding claims 22 and 23, in view of Randolph as modified by Chavin, Chavin teaches elongated members (see proximate lead line 20) comprising hooking devices (note Figure 3) that are adapted to removably attach resistance bands (column 3, lines 30-35) to the elongated members. Furthermore, the hooking devices are selected from the group consisting of a hook and an eyelet (note Figure 6). Based on the teachings of Chavin, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized hooking devices that are selected from the group consisting of a hook and eyelet to removably attach resistance bands to the elongated

members in the device of Randolph in order to make the device more convenient to use as well as capable of being used for a wider range and variety of exercises.

Regarding claims 30-44, 50-52 and 59-61 the method disclosed is capable of being performed by the Randolph device as modified by Chavin, as discussed above. In regard to claims 59-61, based on the pivotal and removable nature of the exercising structures and the apparatus, it is obvious to store the device as well as transfer it to another supporting structure.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Randolph in view of Chavin as applied to claim 1 above, and further in view of Tholkes (US Pat. No. 6,440,046).

Randolph as modified by Chavin substantially discloses the exercise apparatus of claim 1, as discussed above. Randolph fails to disclose an accessory holding structure removably attached to the body support structure. Tholkes discloses an exercise apparatus comprising a telescopically removable member (see proximate lead lines 688 and 689) removably attaching a stationary work surface/accessory holding structure (see proximate lead line 704) to the body support structure (column 13, lines 45-53). Based on the teaching of Tholkes, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized a removably attachable accessory holding structure in the Randolph device in order to allow the user to have convenient and ready access to various accessories while using the exercise apparatus.

Regarding claim 54, the device of Randolph as modified by Chavin and further in view of Tholkes, as discussed above, provides an 'accessory holding structure' that is removably attachable to the body support structure.

Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Randolph in view of Chavin et al as applied to claim 1 above, and further in view of Abdo (US Pat. No. 6,022,303).

Randolph as modified by Chavin substantially discloses the exercise apparatus of claim 1, as discussed above. Randolph fails to disclose a joystick exercising structure, removably attached to the body support structure, comprising a resistance spring pivotally attaching a first tubular structure to a second tubular structure, where the spring is adapted to resist movement of the first tubular structure with respect to the second tubular structure, and a third tubular structure, adapted to function as a handle, perpendicularly attached to the first tubular member. Abdo discloses an abdominal exercise device/joystick exercising structure (note Figure 1) removably attached to the body support structure comprising a resistance spring (note Figure 15 and column 6, lines 43-46) pivotally attaching a first tubular structure (see proximate lead line 34) to a second tubular structure (see proximate lead line 28), and where the resistance spring is adapted to apply a preset amount of resistance against movement of the first tubular structure with respect to the second tubular structure. Abdo further discloses a third tubular structure perpendicularly attached to the first tubular structure (see proximate lead lines 38 and 23) that is adapted to function as a handle for moving the first tubular

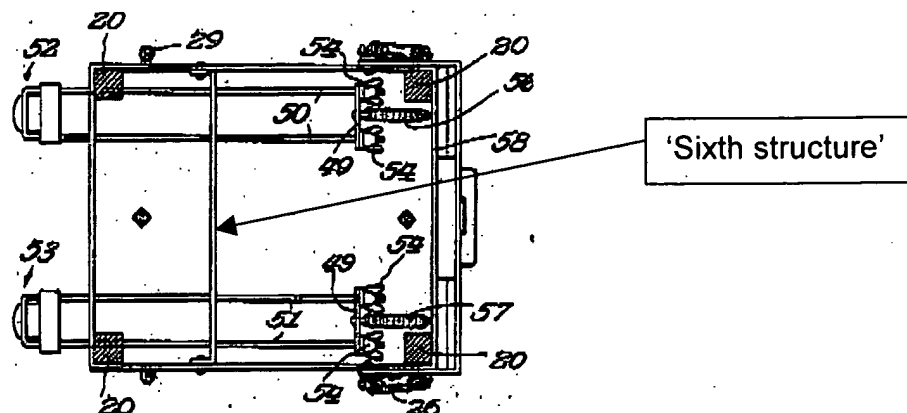
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structure with respect to the second tubular structure (note Figure 8). Based on the teachings of Abdo, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized such a structure in Randolph modified supra in order to add functionality to the device of Randolph by allowing a greater number to exercises to be performed, such as abdominal exercises.

Regarding claims 57 and 58, the method disclosed is capable of being performed by Randolph as modified by Chavin and further in view of Abdo, as discussed above.

Claims 1 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chavin et. al in view of Randolph.

Chavin discloses a portable exercise apparatus comprising a body support structure (note Figure 8) with a sitting structure (see proximate lead line 15) pivotally attached (column 2, lines 83-85) to a back support structure (see proximate lead line 16) that is adapted to be positioned at various angular positions with respect to the sitting structure (note Figure 3), and where the body support structure is adapted to be placed on a supporting structure. Chavin further discloses an elongated exercising structure comprising a fifth structure (see proximate lead line 47) slidably attached to a sixth structure (pictured below) and a third resistance means for applying a preset amount of resistance against movement of the fifth structure with respect to the sixth structure (see proximate lead line 44), and where the elongated exercising structure is removably attached to the body support structure (see proximate lead line 48).



Chavin fails to disclose a removably attachable exercising structure comprising a first structure movably attached to a second structure, an attachment device that can removably attach the second structure to the body support structure, and a resistance means between the first and second structures.

Randolph discloses an exercise apparatus comprising a removably attachable exercising structure (see Figure 14a) comprising a first structure (see proximate lead lines 381 and 382) movably attached (see proximate lead line 389) to a second structure (see proximate lead lines 330 and 321), an attachment device (see proximate lead line 30) that can removably attach the second structure to the body support structure, and a resistance means between the first and second structures (see proximate lead line 42).

Based on the teachings of Randolph, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized an exercising structure such as that of the Randolph device in the exercise apparatus of Chavin in

order to allow for additional and varied arm exercises to be performed, thereby increasing the functionality and versatility of the device.

Regarding claims 30 and 55, the method disclosed is capable of being performed by Chavin as modified by Randolph, as discussed above.

Claims 1 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Randolph in view of Chavin et al.

Randolph substantially discloses the claimed invention, as shown in Figure 3a, which is a portable exercise apparatus comprising a body support structure having a sitting structure (see proximate lead line 14) attached to a back support structure (see proximate lead line 24), with a removably attachable exercising structure (see Figure 14a) comprising a first structure (see proximate lead lines 381 and 382) movably attached (see proximate lead line 389) to a second structure (see proximate lead lines 330 and 321), an attachment device (see proximate lead line 30) that can removably attach the second structure to the body support structure, and a resistance means between the first and second structures (see proximate lead line 42). Randolph further discloses a pivotally attachable exercising structure (note Figure 14b) attached to the support structure (note Figure 14a), where the pivotally attachable exercising structure is capable of being removably attached to the body support structure at a pivot point (note Figure 5), and a fourth resistance means (see proximate lead line 43) for applying resistance against movement of the exercising structure with respect to the body support structure.

Randolph fails to indicate an exercise apparatus with the sitting structure pivotally attached to the back support structure. Chavin discloses an exercising apparatus comprising a sitting structure pivotally attached to a back support structure (note Figure 3 and column 2, lines 83-85). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the exercise apparatus of Randolph in view of the teachings of Chavin with a pivot connecting the sitting structure to the back support structure in order for the back support structure to be positioned at various angular positions with respect to the sitting structure and thereby increasing the quantity and types of exercises capable of being performed.

Regarding claims 30 and 56, the method disclosed is capable of being performed by Randolph as modified by Chavin, as discussed above.

#### ***Allowable Subject Matter***

Claims 16-20, 24, 45-49 and 53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

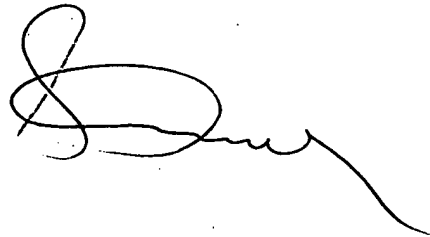
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allana Lewin whose telephone number is 571.272.5560. The examiner can normally be reached on Monday-Friday, 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571.272.4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AL  
8/31/2005

JEROME W. DONNELLY  
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'J. Donnelly', with a long horizontal flourish extending to the right.